

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 1, 2019

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2018AP1050

Cir. Ct. Nos. 2016CV1184
2017CV864

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

HALQUIST STONE COMPANY, INC.,

PLAINTIFF-RESPONDENT,

v.

THE ESTATE OF THOMAS MICHAEL LINNAN,

DEFENDANT,

THOMAS M. LINNAN LIVING TRUST OF 2004,

DEFENDANT-APPELLANT.

L. & W. CONSTRUCTION COMPANY, INC.,

PLAINTIFF-APPELLANT,

v.

HALQUIST STONE COMPANY, INC.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment and an order of the circuit court for Waukesha County: KATHRYN W. FOSTER and MICHAEL O. BOHREN, Judges. *Affirmed.*

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. The Thomas M. Linnan Living Trust of 2004 and L. & W. Construction Company appeal from an order which allocated the purchase price between two parcels of real property following dissolution and partition actions involving Halquist Stone Company, Inc.¹ We affirm as the circuit court did not erroneously exercise its discretion in its allocation decision.

¶2 This case involves the sale by private auction of two adjacent, jointly owned parcels of land. The first parcel, referred to as the North Lake parcel, consists of about forty acres of land and was owned equally by Halquist and Linnan in a general partnership known as the North Lake Sand and Gravel Company. The second parcel, referred to as the Carefree parcel, consists of about 171 acres of land and was owned equally as tenants in common by Halquist and Linnan. This appeal is the result of a court-ordered dissolution of the partnership,

¹ This case began as two separate cases, which the circuit court consolidated. The Honorable Kathryn W. Foster entered the judgment ordering dissolution of the partnership, partition of the Carefree parcel, and private auction of the North Lake and Carefree parcels. Judge Foster also presided over the hearings on the allocation of the sale proceeds and the motion to reconsider. The Honorable Michael O. Bohren ultimately entered the written order granting Halquist’s motion for post-auction relief and denying the motion to reconsider.

Going forward, we will refer to the Linnan Trust and L. & W. Construction as “Linnan,” as Kevin Linnan is the President of L. & W. Construction and the trustee of the Linnan Trust.

partition of the Carefree parcel, and private auction of the North Lake and Carefree parcels on an “as is, where is” basis, along with other assets.²

¶3 Halquist and Linnan agreed to a private auction, and Halquist submitted the winning bid of \$4,750,000.³ After the circuit court confirmed the sale, the parties were required by their written agreement to execute an Asset Purchase Agreement and close on the sale within fifteen days, which included allocating the purchase price between the parcels. They could not agree on allocation and requested the court to allocate the purchase price.

¶4 At the allocation hearings, Halquist argued that the majority of the purchase price should be allocated to the North Lake parcel, whereas Linnan argued that the majority of the value was found in the Carefree parcel.⁴ The court, after considering affidavits submitted by experts, determined that Halquist’s allocation was “the more supportable allocation.”⁵ Linnan appeals, arguing that (1) the circuit court applied the wrong legal standard in exercising its discretion by allowing “the winning bidder unfettered subjective discretion in dictating the purchase price allocation,” (2) the allocation determination was contrary to the

² The parties only dispute the allocation regarding the value of the real estate.

³ It appears from the record that the circuit court gave the parties the option of a private or public auction, and the parties agreed to a private auction, which means that the only bidders were Linnan and Halquist. Notably, Linnan and Halquist could have agreed to a public auction as to each of the two parcels, but instead agreed to a private auction in which one price would purchase both parcels.

⁴ The practical effect of the allocation, according to Linnan, is that Linnan’s tax implication was increased by several hundred thousand dollars.

⁵ Linnan moved for reconsideration of the court’s decision, which the court denied following a hearing.

evidence, and (3) the court failed to conduct an evidentiary hearing on the issue of the fair market value of the parcels.

¶5 We review decisions involving dissolution and partition actions for an erroneous exercise of discretion.⁶ See *Klawitter v. Klawitter*, 2001 WI App 16, ¶8, 240 Wis. 2d 685, 623 N.W.2d 169; *Estate of Matteson v. Matteson*, 2008 WI 48, ¶20, 309 Wis. 2d 311, 749 N.W.2d 557; see also *Schmit v. Klumpyan*, 2003 WI App 107, ¶22, 264 Wis. 2d 414, 663 N.W.2d 331; *Gull v. Van Epps*, 185 Wis. 2d 609, 626-27, 517 N.W.2d 531 (Ct. App. 1994). Judicial actions in equity provide the circuit court “the discretion to fashion a remedy that meets the needs of the specific case.” *Klumpyan*, 264 Wis. 2d 414, ¶26. “Discretionary acts are upheld if the circuit court ‘examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.’” *Klawitter*, 240 Wis. 2d 685, ¶8 (citation omitted).

¶6 Linnan argues that the circuit court applied the wrong legal standard as it allowed “the winning bidder, unfettered discretion in dictating the purchase price allocation,” and that the circuit court did not objectively determine the fair market value of the constituent parcels. Citing to a case from Washington, Linnan argues that “[i]n transactions where one lump-sum purchase price is paid for a conglomeration of assets ... the cost of each asset must be determined by

⁶ Linnan does not appear to disagree that the erroneous exercise of discretion standard is the appropriate standard of review, only that the circuit court failed to properly apply its discretion. In its reply brief, Linnan suggests that Halquist’s assertion that the allocation decision is an equitable action is incorrect as “the allocation decision is a tax matter” and “is not integral to the partition or dissolution actions.” We disagree; the allocation of the purchase price among the assets sold at auction is an integral part of the dissolution and partition actions. Further, Linnan does not appear to suggest a different standard of review or any contrary binding authority indicating a different course of action under Wisconsin law.

apportioning the purchase price among the assets according to each asset's relative fair market value at the time of the acquisition.” *Washington Mut., Inc. v. United States*, 996 F. Supp. 2d 1095, 1104 (W.D. Wash. 2014).

¶7 We first note that the parties, by declining a public auction, provided the court with what they agreed was the fair market value of the combined properties. See *Dreifuerst v. Dreifuerst*, 90 Wis. 2d 566, 573, 280 N.W.2d 335 (Ct. App. 1979) (“[A] sale is the best means of determining the true fair market value of the assets.”). Linnan is not disputing that \$4,750,000 was the fair market value of the combined assets; rather, Linnan is only quarrelling over the allocation of the fair market value between the two parcels. The circuit court, based on evidence provided at two hearings and after considering the arguments of the parties, made a reasoned factual determination that Halquist’s allocation of the purchase price was reasonable and “more supportable” than the allocation suggested by Linnan.

¶8 At the allocation hearings, Linnan highlighted an appraisal report by Moegenburg Research, Inc., which found that the market value of the North Lake parcel was \$510,000 and the market value of the Carefree parcel was \$1,360,000. Linnan also offered a mineral appraiser’s report, which suggested that forty-two percent of the mineral reserve value was attributable to the North Lake parcel, and fifty-eight percent of the mineral reserve value was attributable to the Carefree parcel. Halquist countered with an affidavit from their Chief Financial Officer, Wade Balson, who estimated that the North Lake parcel contains “4 million tons of sand and gravel” that are “above water table level,” giving that parcel a total value of \$2,984,000. Balson also addressed the Moegenburg report, noting that it did not include the value of the unmined aggregate within the North Lake parcel. As to the Carefree parcel, Balson explained that the parcel “has no above water

table sand and gravel reserves” and “[t]herefore any reserves below water table level will be mined at a very low gross profit.” As a result, Balson valued the Carefree parcel at \$784,000. Linnan challenged Balson’s qualifications, claiming that he did not have the personal knowledge or qualifications to provide his opinions.

¶9 It is within the discretion of the circuit court to determine the credibility of the witnesses and the weight of the evidence presented. WIS. STAT. § 805.17(2) (2017-18); *Ricco v. Riva*, 2003 WI App 182, ¶¶12, 17, 266 Wis. 2d 696, 669 N.W.2d 193 (“The determination of whether an expert is qualified to testify is within the circuit court’s discretion” and “[t]he weight and credibility to be given to the opinions of expert witnesses are uniquely within the province of the fact finder.”). The circuit court more than adequately addressed the conflicting appraisals, affidavits, and arguments of Halquist and Linnan at two separate hearings. After reviewing the affidavits and considering the arguments of the parties, the circuit court properly exercised its discretion and settled the question of allocation. The circuit court had sufficient basis in the record (the competing opinions as to valuation of the individual parcels) to decide that the allocation presented by Halquist was reasonable and appropriate. We will not set aside the circuit court’s factual findings and credibility determinations as they are not clearly erroneous.⁷

⁷ Linnan also appealed from the judgment dissolving the partnership, granting partition, and ordering an auction of the assets, but he does not challenge the provisions of the judgment on appeal.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT.
RULE 809.23(1)(b)5 (2017-18).

